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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF COLORADO**
19 **DENVER DIVISION**

20 ARROW ELECTRONICS, INC.,

21 Case No.: 1:18-CV-00889-CMA-MEH

22 Plaintiff,

23 v.

24 ELNA CO., LTD.; ELNA AMERICA INC.;
25 MATSUO ELECTRIC CO., LTD.; TOSHIN
26 KOGYO., LTD.; OKAYA ELECTRIC
27 INDUSTRIES CO., LTD.; OKAYA ELECTRIC
28 AMERICA INC.; TAITSU CORPORATION;
29 TAITSU AMERICA, INC.; SHINYEI KAISHA;
30 SHINYEI TECHNOLOGY CO., LTD.; SHINYEI
31 CAPACITOR CO., LTD.; SHINYEI
32 CORPORATION OF AMERICA, INC.;
33 NITSUKO ELECTRONICS CORPORATION;
34 NISSEI ELECTRIC CO., LTD.; SHIZUKI
35 ELECTRIC CO., INC.; SOSHIN ELECTRIC
36 CO., LTD.; SOSHIN ELECTRONICS OF
37 AMERICA, INC.; NIPPON CHEMI-CON
38 CORPORATION; and UNITED CHEMI-CON,
39 INC.,

40 **PLAINTIFFS' MOTION TO**
41 **TRANSFER PURSUANT TO**
42 **28 U.S.C. SECTION 1404(a)**

43 Defendants.

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1 Plaintiff Arrow Electronics, Inc. (“Arrow”) files this Motion to Transfer pursuant to 28
 2 U.S.C. § 1404(a).

3 **PRELIMINARY STATEMENT**

4 After spending four years litigating these actions as part of an MDL in the Northern District
 5 of California before the Honorable James Donato, including a virtual two-year hiatus because of
 6 Covid-19, Arrow is eager to go to trial and to have its action heard as swiftly as possible.

7 Prior to the JPML remanding this action back to this district, Judge Donato informed Arrow
 8 and the other opt-out parties that—subject to the approval of the remand judges—he would be
 9 “happy to have” Arrow and the other remaining opt-out plaintiffs¹ (together “Opt-Out Plaintiffs”)
 10 actions back before him for a consolidated trial. Further, Judge Donato said that he would be able
 11 to “fit [Arrow and the other remaining opt-out plaintiffs] in for trial,” and that he is available for
 12 that trial as early as October 2022.

13 There are three sets of opt-out plaintiffs: (1) the Florida Plaintiff; (2) the Arizona Plaintiffs;
 14 and (3) Arrow. Years ago, the presiding judge in the Southern District of Florida transferred the
 15 Florida Plaintiff’s action under § 1404 to Judge Donato where it is presently pending. Therefore,
 16 the JPML remanded only the Arizona Plaintiffs and Arrow to the District of Arizona and the
 17 District of Colorado, respectively.

18 Today, the Honorable Roslyn O. Silver, United States District Judge for the District of
 19 Arizona, granted the Arizona Plaintiffs’ § 1404 motion to transfer their consolidated cases back to
 20 the Northern District of California. *See Exhibit 1, July 15, 2022, Order Granting Motion to*
Transfer, 2:16-cv-02808-ROS at ECF No. 102.

22
 23 ¹ The other opt-out Plaintiffs consist of “Arizona Plaintiffs” and a “Florida Plaintiff.” The Arizona
 24 Plaintiffs are Avnet, Inc.; Benchmark Electronics, Inc., Benchmark Electronics Huntsville, Inc.;
 25 Benchmark Electronics Manufacturing Solutions (Moorpark), Inc.; Benchmark Electronics
 26 Manufacturing Solutions, Inc.; Benchmark Electronics Phoenix, Inc.; Benchmark Electronics
 27 Tijuana, S. de R. L. de C. V.; Benchmark Electronics De Mexico S. de R. L. de C.V.; Jaco
 28 Electronics, Inc.; and Vermont Street Acquisition, LLC. *See Avnet, Inc. v. Hitachi Chemical Co., Ltd., et al.* (D. Ariz. Case No. 16-cv-02808) (the “Arizona Action”). The Florida Plaintiff is AASI
 Beneficiaries’ Trust, by and Through Kennet A. Welt, Liquidating Trustee. *See The AASI*
Beneficiaries’ Trust, by and through Kennett A. Welt, Liquidating Trustee v. AVX Corp., et al.
 (S.D. Fla. Case No. 16-cv-23691) (the “Florida Action”).

1 Arrow seeks the same relief, and respectfully requests that this Court transfer its case back
 2 to the Northern District of California so that Judge Donato may hold a consolidated trial with
 3 Arrow, the Florida Plaintiff, and the Arizona Plaintiffs.

4 **I. CONCISE BACKGROUND AND RELEVANT PROCEDURAL HISTORY**

5 **A. Judge Donato's *In re Capacitors* Background**

6 The *In re Capacitors* litigation was initiated in 2014 with the filing in the United States
 7 District Court for the Northern District of California of class actions by direct purchaser plaintiffs
 8 (DPPs) and indirect purchaser plaintiffs (IPPs). The class actions were then consolidated before
 9 Judge James Donato. Judge Donato has presided over the *In re Capacitors* litigation for almost
 10 nine years. In that time he has presided over two *In re Capacitors* trials involving the direct
 11 purchaser class—issuing decisions on numerous issues likely to arise in Arrow's trial—ruled on
 12 dozens of summary judgment motions and *Daubert* motions, and considered a litany of motions
 13 *in limine* from both the plaintiffs' class and defendants. In addition, to the civil actions, has also
 14 overseen the ten companion criminal actions in which corporate and individual defendants pleaded
 15 guilty to criminal violations of Section 1 of the Sherman Act for their involvement in the capacitors
 16 price-fixing conspiracy.

17 Accordingly, Judge Donato is deeply familiar with the witnesses and their testimony, and
 18 the invocations and revocations of various witnesses' Fifth Amendment rights. With regard to
 19 Arrow, specifically, Judge Donato has adjudicated every aspect of Arrow's action, including a
 20 motion to dismiss and various motions for summary judgment. *See* 17-md-02801-JD ("MDL
 21 Docket").

22 **B. Judge Donato's Invitation to Try Arrow's Case Along with the Other Opt-Out
 23 Cases after § 1404 Transfers from This Court and the Arizona Court**

24 In light of Judge Donato's extensive experience with the *Capacitors* litigation, the
 25 convenience to the parties and witnesses, and in the interest of justice, Arrow joined with the other
 26 Opt-Out Plaintiffs to file a *Lexecon*² notice waiving their rights to be remanded to the District of
 27 Colorado following the conclusion of pre-trial proceedings. MDL, Dkt. No. 1533. Defendants

28 ² *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

1 opposed the *Lexecon* waiver, and insisted that the actions be remanded to this Court. MDL, Dkt.
 2 No. 1541.

3 Judge Donato subsequently held a status conference to discuss remanding this action back
 4 to this district. *See Exhibit 2* (Apr. 21, 2022 Status Conf. Tr.). During the conference, Arrow and
 5 the Florida/Arizona opt-out plaintiffs informed Judge Donato that, if the court was agreeable, it—
 6 and the other opt-out plaintiffs remanded to the District of Arizona—would file § 1404 motions to
 7 be transferred back to the Northern District of California because of the efficiency advantages. *See*
 8 Exhibit A at 10:23-11:09. As the Arizona Plaintiffs explained, the remaining direct actions could
 9 be tried together in a single trial because of the common representation of the plaintiffs. *Id.* at
 10 10:23-11:9.

11 Judge Donato agreed with Arrow and the Florida and Arizona Plaintiffs: “I just want to be
 12 clear, the trial will not be an issue. We are prioritizing trials. I’ve done three, including the last
 13 DPP trial for the MDL just a couple months ago in December. So I can get you in on trial soon.
 14 That’s not a holdup for me.” *Id.* at 13:18-22. Judge Donato further suggested that, “if [the]
 15 Colorado and Arizona [Plaintiffs] come back, maybe you two would do it together. I mean, this is
 16 just a concept. Does that sound okay?” *Id.* 20:18-21. Plaintiffs’ counsel agreed. *Id.* at 20:24-25:2.
 17 He then confirmed with Arrow and the other opt-out plaintiffs that they could be ready for trial by
 18 October 2022. *Id.* at 16:16-17:15. Concluding the conference, Judge Donato invited Arrow and
 19 the other opt-out plaintiffs to “come back. Happy to have you. Can certainly fit you in for trial, no
 20 problem.” *Id.* at 24:17-18. Accordingly, the Arizona Plaintiffs obtained a § 1404 transfer from the
 21 Arizona court today, and Arrow presently moves for the same before this Court.

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1 **C. The Common Defendants' Relevant Admissions on a § 1404 Transfer**

2 Though Arrow did not file its opt-out complaint until 2018, prior to that, in 2016,
 3 Defendants common to the Opt-Out Plaintiffs (“Common Defendants”)³ moved the Arizona and
 4 Florida district courts under § 1404 to transfer each of the respective opt-out actions to Judge
 5 Donato for all purposes, including trial. *See Avnet, Inc. et al v. Hitachi Chemical Co., Ltd., et al.*,
 6 Dist. Ariz. 16-cv-02808-ROS (the “Arizona Action”), ECF No. 29;⁴ *The AASI Beneficiaries’*
 7 *Trust, by and through Kennett A. Welt, Liquidating Trustee v. AVX Corp., et al.* (S.D. Fla. Case
 8 No. 16-cv-23691) (the “Florida Action”), ECF No. 6.

9 In those motions, the Common Defendants argued that “all [parties] agree that the
 10 convenience of the witnesses and parties strongly favors transferring this action to the Northern
 11 District of California.” *See* Arizona Action, ECF 29 at 7. More specifically, the Common
 12 Defendants argued that a transfer would prevent “burden[ing] the witnesses and the parties with
 13 multiple, duplicative trials in both the Northern District of California and before this Court.” *Id.*
 14 (“These factors weigh heavily in favor of transfer because, as Avnet argued to the JPML, transfer
 15 to the Northern District of California ‘will further the convenience of the parties and witnesses’”)
 16 (internal quotes omitted); Florida Action, ECF 49 at 7 (same). Further, Defendants asserted that,
 17 “[s]imply put, Section 1404(a) was designed to prevent . . . separate, duplicative trials that would
 18 considerably inconvenience many witnesses.” Florida Action, ECF 49 at 8.

19 Defendants’ 2016 position applies today with even more relevance. In the intervening
 20 years, Defendants have engaged in pretrial litigation in the Northern District of California before
 21

22 ³ Common Defendants include ELNA Co., Ltd.; ELNA America Inc. (collectively, “ELNA”);
 23 Matsuo Electric Co. (“Matsuo”), Ltd.; Taitsu Corporation; Taitsu America, Inc. (collectively,
 24 “Taitsu”); Shinyei Capacitor Co., Ltd.; Shinyei Corporation of America, Inc.; Shinyei Kaisha;
 25 Shinyei Technology Co., Ltd. (collectively “Shinyei”); Soshin Electric Co., Ltd.; Soshin
 26 Electronics of America, Inc. (collectively, “Soshin”); Nippon Chemi-Con Corporation and United
 27 Chemi-Con, Inc. (collectively “NCC”) are all common defendants to the Opt-Out Plaintiffs.
 Arrow’s claims against the following former common defendants who also moved to transfer have
 been resolved: Toshin Kogyo, Ltd.; Okaya Electric Industries Co., Ltd.; Okaya Electric America
 Inc.; Nitsuko Electronics Corporation; Nissei Electric Co., Ltd.; and Shizuki Electric Co.

28 ⁴ To be clear, common defendants Nippon Chemi-Con Corporation and United Chemi-Con, Inc.
 were not involved in that briefing Arizona briefing.

1 Judge Donato, who has presided over every aspect of Defendants' actions, including over the
 2 various opt-out actions. Given the Opt-Out Plaintiffs' intent to consolidate their actions into one
 3 trial before Judge Donato, and the court's express availability to try the consolidated cases in the
 4 fall of 2022, transfer is in the interest of justice. After four years of litigation, Arrow is entitled its
 5 day in court.

6 **D. Today's Arizona Ruling Granting the § 1404 Motion to Transfer**

7 As mentioned above, Judge Silver in the District of Arizona granted the Arizona Plaintiffs'
 8 § 1404 motion and directed the Clerk of Court to transfer the Arizona Plaintiff's actions to Judge
 9 Donato in the Northern District of California. *See Exhibit 1, Order Granting Motion to Transfer.*
 10 Judge Silver explained: "Now that Plaintiff no longer has a strong preference that trial occur in
 11 Arizona, the balance of the factors supports transferring the case to California. Of particular
 12 importance, the judge who handled the multidistrict proceeding is now exceptionally familiar with
 13 the parties' contentions and governing law." *Id.* at 2. Similarly, Arrow no long has a preference
 14 that its trial occur in Colorado; instead, it would like to try its case in the District of California
 15 along with the Florida Plaintiff and the newly-transferred Arizona Plaintiffs.

16 **II. LEGAL STANDARD**

17 "For the convenience of the parties and witnesses, in the interest of justice, a district court
 18 may transfer any civil action to any other district or division where it might have been brought[.]"
 19 28 U.S.C. § 1404(a). The right to a transfer under § 1404(a) is available to a plaintiff as well as a
 20 defendant. *See Pfizer Inc. v. Sandoz, Inc.*, 2010 WL 502726, at *5 (D. Colo. Feb. 8, 2010)
 21 (Granting transfer motion of plaintiff who filed in the District of Colorado, but later preferred the
 22 District of Delaware, and where the defendant failed to "overcome the presumption in favor of the
 23 Plaintiff's preferred choice of forum"). This is because, "[a] plaintiff is not bound by his choice of
 24 forums, if he later discovers that there are good reasons for transfer. A judge in his [or her]
 25 discretion may take this into consideration in determining if a transfer should be granted." *Philip*
 26 *Carey Mfg. Co. v. Taylor*, 286 F.2d 782, 784 (6th Cir. 1961); *Oliver v. FCA US LLC*, No. 19-CV-
 27 11738, 2020 WL 3071851, at *2 (E.D. Mich. June 10, 2020) (same).

28

1 In the Tenth Circuit, when considering whether to effectuate a transfer under § 1404, courts
 2 analyze several factors, including, *inter alia*, the plaintiff's choice of forum, accessibility of
 3 witnesses, the relative obstacles and advantages to a fair trial, the difficulties arising from
 4 congested dockets, and other considerations that facilitate the easy, expeditious, and economical
 5 resolution of the action at trial. *Bovino v. Incase Designs Corp.*, 13-CV-2106-WJM-MJW, 2014
 6 WL 1796914, at *1 (D. Colo. May 6, 2014) (quoting *Chrysler Credit Corp. v. Country Chrysler,*
 7 *Inc.*, 928 F.2d 1509, 1516 (10th Cir. 1991)). Courts must consider such factors because each
 8 motion to transfer under § 1404 must be analyzed on “an individualized, case-by-case
 9 consideration of convenience and fairness.” *EC Data Sys., Inc. v. J2 Glob., Inc.*, 12-CV-00446-
 10 PAB, 2012 WL 3764765, at *1 (D. Colo. Aug. 29, 2012) (quoting *Stewart Org., Inc. v. Ricoh*
 11 *Corp.*, 487 U.S. 22, 29 (1988)); *Texas E. Transmission Corp. v. Marine Office–Appleton & Cox*
 12 *Corp.*, 579 F.2d 561, 567 (10th Cir. 1978).

13 As noted today by Judge Silver, there is good reason to transfer this case back to the
 14 Northern District of California under Judge Donato. Through the four years of litigating this matter
 15 before Judge Donato, Arrow’s choice of forum is the Northern District of California. Due to the
 16 procedural history and litigation that has occurred, to which Common Defendants have been
 17 engaged, the Northern District of California, in a consolidated trial, is the most conveniently
 18 accessible forum for the parties and the witnesses (as Common Defendants themselves have argued
 19 on two separate occasions). There are no credible obstacles, but numerous advantages to a trial
 20 held in the Northern District of California before Judge Donato, as have been illustrated herein.
 21 Further, any difficulties arising from congested dockets are alleviated by Judge Donato’s
 22 availability to try this case, and those of the other opt-out plaintiffs in the fall of this year. Resolving
 23 the remaining disputes at trial before Judge Donato in the fall of this year facilitates the easy,
 24 expeditious, and economical resolution of this action, which has been before Judge Donato for the
 25 past four years.

26 The Supreme Court has expressly contemplated an originating court, like this one,
 27 transferring an action back to the MDL court after remand. In *Lexecon, Inc. v. Milberg Weiss*
 28 *Bershad Hynes & Lerach*, the Supreme Court addressed whether an MDL court could transfer **to**

itself, pursuant to 28 U.S.C. § 1404(a), despite the command of 28 U.S.C. § 1407(a) that the Panel remand such cases back to the court of origin after pretrial procedures. *See* 523 U.S. 26 (1998). Holding that a transferee court must remand a case back to the transferor court for trial, the *Lexecon* court made it clear that “on any view of § 1407(a), if an order may be made under § 1404(a), **it may be made after remand** of the case to the originating district court.” 523 U.S. 26 at 39 (emphasis added). Indeed, the *Lexecon* Court cited a House Report on the bill that later became § 1407 “that spoke of the continued vitality of § 1404 in § 1407 cases: ‘[t]he proposed statute affects only the pretrial stages in multidistrict litigation. It would not affect the place of trial in any case or exclude the possibility of transfer under other Federal statutes.’” *Id.* at 39-40.

Therefore, “[b]ecause the case[] at issue here [was] originally filed” in the District of Colorado, “the rule espoused in *Lexecon* does not bar this court from considering [a] § 1404(a) motion.” *Altamont Pharmacy, Inc. v. Abbott Lab'ys*, 2002 WL 69495, at *1 (N.D. Ill. Jan. 18, 2002). Accordingly, under *Lexecon*, this court may grant the requested § 1404 transfer to the MDL court – the relief Arrow seeks here, and the relief Judge Silver granted today in Arizona to the other opt-out plaintiffs.

The Second Circuit also recognizes the expediency of transferring an action back to the MDL court for consolidation with other actions. *See Shah v. Pan Am. World Servs., Inc.*, 148 F.3d 84, 90–91 (2d Cir. 1998) (“*Lexecon* does not preclude later consolidation of multiple suits for trial after they have first been returned to the district courts from which they came. ‘[O]n any view of § 1407(a), if an order may be made under § 1404(a), it may be made after remand of the case to the originating district court.’”) (citing *Lexecon*, 523 U.S. at 39). That is the situation here. Upon transfer back to the Northern District of California, Arrow and the other opt-out plaintiffs (who are all, as of today, in California) will seek to consolidate their cases, as suggested by Judge Donato.

Finally, transferring this case back to the Northern District of California is consistent with the post remand “policy reasons” set forth by the Manual for Complex Litigation. Specifically, the Manual recognizes that “during the often protracted time of the section 1407 assignment, the transferee judge gains a solid understanding of the case, and it makes sense for trial to be conducted

1 by the judge with the greatest understanding of the litigation” and that “there may be efficiencies
 2 in adjudicating related actions or portions thereof in one trial.” *See Manual Complex Lit.* § 20.132.
 3 The Manual therefore provides “evolving alternatives” which “permit the transferee court to
 4 resolve multidistrict litigation through trial while remaining faithful to the *Lexecon* limitations.”
 5 *Id.* One of those alternatives is the precise relief Plaintiff seeks: “After an action has been remanded
 6 to the originating transferor court at the end of section 1407 pretrial proceedings, the transferor
 7 court could transfer the action pursuant to 28 U.S.C. § 1404... back to the transferee court for trial
 8 by the transferee judge.” *Id.* Accordingly, like the Arizona court did today for the Arizona
 9 Plaintiffs, this Court should transfer Arrow back to the Northern District Court of California.

10 **III. TRANSFER OF PLAINTIFFS’ ACTIONS TO THE NORTHERN DISTRICT OF 11 CALIFORNIA IS WARRANTED**

12 **A. Defendants have Already Declared the Northern District of California is the 13 Appropriate Forum to Try Opt-Out Cases**

14 Each Common Defendant previously told other federal district courts that the Northern
 15 District of California is the most appropriate venue for their respective cases, and that transfer to
 16 California serves the interest of justice. *See* Arizona Action, ECF No. 29 at 1 (“Defendants request
 17 that the Court transfer this action under Section 1404(a) to serve the convenience of the parties
 18 and witnesses, maximize the efficiency of having a single trial, and avoid the possibility of
 19 inconsistent or contradictory results.”). Accordingly, any argument put forth by the Common
 20 Defendants that trying this case in the Northern District of California is a burden, is inconvenient,
 21 will subject them to prejudice, or is in any way inappropriate is without merit. Plaintiff does not
 22 believe it is fitting or useful to burden this Court and its resources with a trial when the defendants,
 23 themselves, have already acknowledged that a different venue is more appropriate.

24 **B. The Interests of Justice are Served by a Transfer**

25 “The ‘interest of justice’ is a separate element of the transfer analysis that relates to the
 26 efficient administration of the court system. ... For this element, courts look to factors including
 27 docket congestion and likely speed to trial in the transferor and potential transferee forums.” *Rsch.*
Automation, Inc. v. Schrader-Bridgeport Int'l, Inc., 626 F.3d 973, 978 (7th Cir. 2010).

1 The grounds for transfer are straightforward. From the time Common Defendants filed
 2 their original § 1404 motion in Arizona, they have agreed that the Northern District of California
 3 is the most efficient forum to try the Arizona Plaintiffs' actions and that the Arizona and Florida
 4 Plaintiffs could have filed their suits in the Northern District of California (Arrow is no different).
 5 With Judge Donato's nine-year management of the *In re Capacitors* MDL, his administration of
 6 two trials, the corresponding criminal proceedings, and his availability for a trial of this action, as
 7 well as the other opt-out plaintiffs' actions this fall, that efficiency advantage has become
 8 paramount.

9 Today, Judge Silver in the District of Arizona expressly found Judge Donato to be
 10 "exceptionally familiar with the parties' contentions and governing law." *See Order Granting*
 11 *Motion to Transfer* at 3. When an MDL judge has become as familiar with an action as Judge
 12 Donato has in this action, and is able to schedule a trial earlier than the remand court, the interests
 13 of justice support a § 1404 transfer. For example, in *Kenwin Shops, Inc. v. Bank of Louisiana*, the
 14 Southern District of New York transferred two actions back to the MDL court following remand.
 15 *See Kenwin Shops*, No. 97 CIV 907, 1999 WL 294800 (S.D.N.Y. May 11, 1999). The court
 16 explained:

17 Judge Duval [the MDL judge] is of necessity more familiar with the litigation,
 18 having had all of the cases before him pursuant to 28 U.S.C. § 1407. It also
 19 appears—if BOL's suggestion that a trial will be scheduled in the Eastern District
 20 of Louisiana for this coming summer is correct—that the matter can be resolved
 21 considerably more promptly in that district than it could in this district where, on
 22 this Court's current trial schedule, it is unlikely that a trial could be had before the
 23 year 2000.

24 *Id.* at *4.

25 This action is on all fours with the *Kenwin Shops* action. Judge Donato has said that he is
 26 ready and able to try Arrow and the other opt-out plaintiffs' actions in October 2022. Thus,
 27 proceeding in the Northern District of California will lead to an earlier trial and more easy,
 28 expeditious, and economical resolution of this action as well as the other opt-out plaintiff actions.

29 The Tenth Circuit takes into consideration the speed of getting to trial when evaluating
 30 whether to transfer a case to another district. *See, e.g., Emps. Mut. Cas. Co. v. Bartile Roofs, Inc.*,

1 618 F.3d 1153, 1169 (10th Cir. 2010) (denying a motion to transfer from the District of Wyoming
 2 to the District of Utah, in part, because “[w]hen evaluating the administrative difficulties of court
 3 congestion, the most relevant statistics are the median time from filing to disposition, median time
 4 from filing to trial, pending cases per judge, and average weighted filings per judge . . . the District
 5 of Wyoming has a substantially less congested docket than the District of Utah”). Other circuits
 6 do the same. *See Ito v. Tokio Marine & Fire Ins. Co.*, 166 F. App’x 932, 935 (9th Cir. 2006) (“In
 7 considering the administrative difficulties flowing from court congestion, ‘[t]he real issue is not
 8 whether a dismissal will reduce a court’s congestion but whether a trial may be speedier in another
 9 court because of its less crowded docket.’”) (quoting *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325,
 10 1337 (9th Cir. 1984)); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879–80 (3d Cir. 1995) (“The
 11 public interests have included: . . . practical considerations that could make the trial easy,
 12 expeditious, or inexpensive.); *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008)
 13 (same); *Cherokee Exp. Co. v. Chrysler Int’l Corp.*, 142 F.3d 432 (6th Cir. 1998) (“In short, the
 14 Court may consider any factor that may make any eventual trial easy, expeditious, and
 15 inexpensive.”).

16 Further, the fact that Judge Donato has ruled on substantive motions does not warrant
 17 against transfer of this action, particularly given Judge Donato’s availability to set this case for
 18 trial this fall. *See Romo v. McKesson Corp.*, No. ED 12-2036 PSG EX, 2015 WL 3622620, at *4
 19 (C.D. Cal. June 9, 2015) (transferring action where, “even if the MDL is winding down because
 20 many of the MDL cases are being remanded, that Court has become familiar with the issues at
 21 stake in this litigation and would, consequently, resolve them more efficiently” and “has made
 22 various rulings in the MDL that likely touch on the *Propoxyphene Actions*”); *Keene v. McKesson*
 23 *Corp.*, No. 12-CV-05924-JST, 2015 WL 9257949, at *3–4 (N.D. Cal. Dec. 17, 2015) (same).

24 The Court should grant this motion in the interest of justice based on Judge Donato’s
 25 familiarity with the trial issues and his readiness to try all of the remaining opt-out actions together
 26 in October 2022.

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 28

1 **C. Colorado Has No Interest in Keeping the Action**

2 Although another factor for the Court to consider in making a § 1404 analysis is the
 3 “applicable state law[]” that will apply in each forum, *Van Dusen v. Barrack*, 376 U.S. 612, 630
 4 (1964),⁵ the issues presented here are purely federal. Here, Arrow brings a single-count action
 5 under Section 1 of the Sherman Act; accordingly, there are no Colorado state law claims a court
 6 must resolve. Indeed, there are no state law issues whatsoever; therefore, Defendants can incur no
 7 prejudice in trying the case in California.

8 Moreover, the instant motion is hardly forum shopping. After all, the Judicial Panel on
 9 Multidistrict Litigation – not Arrow – selected the Northern District of California. And it is Judge
 10 Donato in the Northern District of California who is “happy” to offer a, “easy, expeditious, and
 11 economical resolution of the action at trial” due to his near-term availability and his ability to
 12 consolidate the various opt-out actions into one trial.

13 Further, Arrow does not bring this motion by any desire to evade the jurisdiction of the
 14 District of Colorado. Instead, Arrow seeks to consolidate its case with other opt-out plaintiffs, all
 15 of whom are now in the Northern District of California, where Arrow will receive an expeditious
 16 trial date. As the Common Defendants told the district court in Florida, “Section 1404(a) was
 17 designed to prevent . . . separate, duplicative trials that would considerably inconvenience many
 18 witnesses.” Florida Action, ECF 49 at 8. Transfer to the MDL court would avoid such duplicative
 19 trials.

20 **D. There is Neither Prejudice Nor Inconvenience for Defendants in California**

21 A transfer to the Northern District of California will not prejudice or inconvenience the
 22 affected Defendants – Defendants who fought for such a transfer at the outset of the litigation.
 23 Defendants have litigated *In re Capacitors* in the Northern District of California for nearly a
 24 decade. Moreover, the majority of Defendants’ witnesses and parties are from Japan. California’s
 25 proximity to Japan relative to Colorado makes California a more convenient forum for Defendants.

26
 27 ⁵ “The decisions of the lower federal courts, taken as a whole, reveal that courts construing s
 28 1404(a) have been strongly inclined to protect plaintiffs against the risk that transfer might be
 accompanied by a prejudicial change in applicable state laws.” *Van Dusen*, 376 U.S. at 630.

1 In California, Defendants' witnesses and parties will have a shorter travel time and a smaller
 2 difference in time zones. Indeed, Arrow is aware of no witness or counsel for Defendants
 3 domiciled or located in Colorado. And, as described above, the Common Defendants previously
 4 told district courts in both Florida and Arizona that "the convenience of the witnesses and parties
 5 strongly favors transferring this action to the Northern District of California." Arizona Action,
 6 ECF 29 at 7; Florida Action, ECF 49 at 7. Accordingly, Defendants cannot claim they are
 7 prejudiced or inconvenienced in trying this case in California instead of Colorado.

8 To the contrary, Defendants would be prejudiced in having to try, essentially, the exact
 9 same case in two different districts, rather than trying a consolidated case with the Florida, Arizona,
 10 and Colorado opt-out Plaintiffs in California. *C.f. Bayly Mfg. Co. v. Koracorp Industries, Inc.*, 298
 11 F. Supp. 600, 603 (D. Colo. 1969) ("the pendency of similar actions in the proposed transferee
 12 district is a persuasive factor to be considered but it alone is not sufficient to justify a transfer").

13 IV. CONCLUSION

14 For the foregoing reasons, the Arizona Plaintiffs respectfully request that this Court grant
 15 their Motion and transfer this action to the Northern District of California pursuant to 28 U.S.C.
 16 § 1404(a).

17 DATED: July 15, 2022

Respectfully submitted,

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5 *Attorneys for Plaintiff, Arrow Electronics*

6 **D.C. COLO. L. CivR 7.1(a) CERTIFICATION OF COMPLIANCE**

7 Counsel for Arrow hereby certifies that he has conferred or made reasonable, good faith
8 efforts to confer with counsel for ELNA Co., Ltd.; ELNA America Inc.; Matsuo Electric Co., Ltd.;
9 Taitsu Corporation; Taitsu America, Inc.; Shinyei Capacitor Co., Ltd.; Shinyei Corporation of
10 America, Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Soshin Electric Co., Ltd.; Soshin
11 Electronics of America, Inc., and Nippon Chemi-con Corporation; and United Chemi-con, Inc.,
12 via email communication. Defendants oppose this Motion.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing document was served via e-mail through the CM/ECF system for the District of Arizona on all counsel of record on July 15, 2022.

/s/ Corey P. Gray
Corey P. Gray